

**DEPARTMENT OF STATE REVENUE**

**LETTER OF FINDINGS NUMBER: 93-0279 CSET  
Controlled Substance Excise Tax  
For Tax Periods: 1993**

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**ISSUE**

**1. CONTROLLED SUBSTANCE EXCISE TAX: DOUBLE JEOPARDY**

**Authority:** IC 6-7-3-5; United States Constitution Amendments 5 and 14, Bryant v. State of Indiana (1995)(Indiana Supreme Court).

Taxpayer protests the assessment of Controlled Substance Excise Tax.

**STATEMENT OF FACTS**

Taxpayer was arrested on February 10, 1993 for the possession of Marijuana. A Jeopardy Finding, Jeopardy Assessment Notice and Demand was issued on February 16, 1993. Taxpayer protested the Controlled Substance Excise Tax. Taxpayer's criminal charges were dismissed on April 26, 1993. A hearing on this matter was scheduled for July 1, 1998 in room N248 of the Indiana Government Center North at 10:00 a.m. Taxpayer called on June 16, 1998 and indicated he had received the notice of hearing. Taxpayer did not appear for the hearing. Further facts will be provided as necessary.

**Controlled Substance Excise Tax-Double Jeopardy.**

**DISCUSSION**

Since Taxpayer did not appear at the hearing or offer any written information in lieu of a hearing, the Department has to rely on the contents of the file in making a decision on the matter. IC 6-7-3-5 imposes the Controlled Substance Excise

Tax on the delivery and possession of Marijuana in the State of Indiana. The Fifth and Fourteenth Amendments of the United States Constitution prohibit placing any citizen in jeopardy twice for the same action. Jeopardy attaches when a determination of guilt is made and a person is put at risk of punishment. Bryant v. State of Indiana (1995)(Indiana Supreme Court). In the instant case, the Record of Jeopardy Finding, Jeopardy Assessment Notice and Demand put Taxpayer at risk of punishment or in jeopardy on February 16, 1973. The criminal proceedings were dismissed on April 26, 1993. Taxpayer was never placed in jeopardy in the criminal proceedings. Department's jeopardy assessment was the only jeopardy in this situation.

### **FINDING**

Taxpayer's protest is denied.